



TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



RLH Industries, Inc.,

Opposer,

vs.

Trans Continental Equipment Ltd.,

Applicant.

02-14-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

Opposition No. 91151964

Serial No. 75/723671

Mark:

CHIMNEYFLEXIBLE LINERS  
and Design

Attorney's Reference: 32071-142296

**APPLICANT'S RESPONSE TO OPPOSER'S  
MOTION FOR SUMMARY JUDGMENT**

Applicant Trans Continental Equipment, Ltd. respectfully submits its response to Opposer's Motion for Summary Judgment, pursuant to Rule 2.116 of the Trademark Rules of Practice and Rule 56 of the Federal Rules of Procedure. This response is supported by the accompanying Memorandum, the Declaration of Dalton B. Barnoff and the attached exhibits.

Respectfully submitted,

By:

Mark B. Harrison

Jacqueline Levasseur Patt

**Venable, Baetjer, Howard & Civiletti, LLP**

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Date: February 14, 2003

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RLH Industries, Inc.,

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**MEMORANDUM IN SUPPORT OF APPLICANT'S RESPONSE  
TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Applicant Trans Continental Equipment, Ltd. respectfully submits its Memorandum in Support of its Response to Opposer's Motion for Summary Judgment, pursuant to Rule 2.116 of the Trademark Rules of Practice and Rule 56 of the Federal Rules of Procedure.

**I. INTRODUCTION**

Summary judgment is a "salutary method of disposition 'designed to secure [the] just, speedy and inexpensive determination of every action.'" Sweats Fashions, Inc. v. Pannill Knitting Co., Inc., 4 USPQ 2d 1793, 1795 (Fed. Cir. 1987) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. FED. R. CIV. PRO. 56 (c). A fact is genuinely in dispute if the evidence is such that a reasonable factfinder could find in favor of the non-moving party. Salacuse v. Ginger Spirits, Inc., 44 U.S.P.Q.2d 1415, 1418 (TTAB 1997) (citing Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "The non-moving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party." Salacuse, 44 U.S.P.Q.2d at 1418.

In this case, for the purposes of this motion, Applicant concedes that Opposer owns the Registration No. 1,730,636 for the mark CHIM-FLEX issued on November 10, 1992. In addition, for the purposes of this motion, Applicant concedes that Opposer's goods and Applicant's goods offered under their respective marks are similar. However, there is no likelihood of confusion between Opposer's mark CHIM-FLEX as pled in its Notice of Opposition and Applicant's mark CHIMNEYFLEXIBLE LINERS and Design as depicted in the application Serial No. 75/723671, where the marks are substantially different, any similarities result from descriptive and weak terms, and the parties' goods are sold to sophisticated purchasers who make careful and informed purchasing decision. Moreover, there is no evidence of any likelihood of confusion and Applicant adopted its mark in good faith. The question of a likelihood of confusion is an issue of law.

## **II. STATEMENT OF UNDISPUTED FACTS**

1. Applicant, Trans Continental Equipment, Ltd., filed an intent-to-use application to register the mark CHIMNEY FLEXIBLE LINERS and Design (as shown below) on June 4, 1999, Serial No. 75/723,671, claiming priority on its corresponding Canadian application No. 1,013,353 filed April 27, 1999.



2. Applicant's mark as depicted in Serial No. 75/723,671 was published for opposition in the Official Gazette on March 19, 2002 covering "ducts hoses, tubing pipes, collars and coils for heating, ventilation and air conditioning, all entirely or predominantly of metal processes; parts for the foregoing" and disclaiming the terms CHIMNEYFLEXIBLE LINERS apart from the mark as shown.

3. RLH Industries, Inc. owns by assignment the Registration No. 1,730,636 for the mark CHIM-FLEX for "metal building materials, namely, metal chimney liners" issued on November 10, 1992.

4. Opposer filed a Notice of Opposition of Applicant's mark on March 26, 2002.

5. Applicant filed its Answer September 6, 2002.<sup>1</sup>

6. Opposer served its First Set of Interrogatories and Document Requests in this case on August 2, 2002

7. Applicant served its responses and objections to Opposer's First Set of Interrogatories and Document Requests on October 7, 2002.

8. Applicant served its First Set of Interrogatories and Request for the Production of Documents and Things on Opposer on October 8, 2002.

9. Opposer served its responses and objections to Applicant's First Set of Interrogatories and Request for the Production of Documents and Things on November 12, 2002.

10. Opposer filed its Motion for Summary Judgment on January 10, 2003 prior to the end of the close of discovery.

11. Opposer filed its Motion for Summary Judgement on January 10, 2003, prior to the close of the discovery period in this case.

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<sup>1</sup> Applicant's Consented Motion for Extension of time to File Answer was granted until September 6, 2002.

12. The Applicant, Trans Continental Equipment, Ltd., is in the business of manufacturing and selling chimney products including flexible chimney liners and parts therefor. See Declaration of Dalton B. Barnoff, ¶ 7, attached hereto as Exhibit 1.

13. The suggested retail price of applicant's products are approximately \$350.00. See Declaration of Dalton B. Barnoff, ¶ 8, attached hereto as Exhibit 1.

14. Applicant's products are either sold directly to professional installers or sold in bulk to wholesalers and distributors who in turn re-sell the products to professional installers. See Declaration of Dalton B. Barnoff, ¶ 9, attached hereto as Exhibit 1.

15. Because Applicant's products are installed by professional installers, the owners of the homes in which Applicant's products are installed are generally not aware of the trademarks of Applicant's products. See Declaration of Dalton B. Barnoff, ¶ 10, attached hereto as Exhibit 1.

16. The general public does not typically purchase applicant's products directly because installation of applicant's products by a non-licensed installer will void warranties. See Declaration of Dalton B. Barnoff, ¶ 12, attached hereto as Exhibit 1.

### **III. ARGUMENT**

For the purposes of this motion, Applicant has conceded that Opposer owns the Registration No. 1,730,636 for the mark CHIM-FLEX, and, as such, has priority of use of the mark CHIM-FLEX, and that the parties' goods offered under their respective marks are similar; however, there is no likelihood of confusion between Opposer's mark CHIM-FLEX and Applicant's mark CHIMNEYFLEXIBLE LINERS and Design because of the substantial differences in the marks, the descriptiveness of the words in Applicant's mark and the sophistication of the parties' customers.

Pursuant to the Lanham Act, a mark is not entitled to registration, if the mark for which registration is sought (1) “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark office, or a mark or trade name previously used in the United States by another and not abandoned” and (2) is likely to cause “confusion, or to cause mistake, or to deceive.” 15 U.S.C. 1052(d).

The Federal Circuit has established that likelihood of confusion is an issue of law. See In re Shell Oil Co., 992 F.2d 1204, 1206 (Fed. Cir. 1993); Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd., 227 USPQ 541, 542 (Fed. Cir. 1985). Accordingly, disputes regarding a likelihood of confusion may be resolved on a motion for summary judgment. See Sweats Fashions, 4 USPQ 2d at 1797.

A likelihood of confusion analysis entails determining “whether there is a likelihood of confusion as to the source of the goods because of the marks used thereon.” In re Rexel, Inc., 223 USPQ 830, 831 (TTAB 1984). The principal considerations relevant to the issue of a likelihood of confusion are listed in In re E.I. DuPont deNemours & Co., 476 F.2d 1357, 1361 (CCPA 1973). See Opryland USA, Inc. v. Great American Music Show, 970 F.2d 847, 850 (Fed. Cir. 1992). Not all the listed factors are relevant in each case. See DuPont, 476 F.2d at 1361; see also Opryland, 970 F.2d at 850; Kellogg Co. v. Pack'em Enterprises, Inc., 951 F.2d 330 (Fed. Cir. 1991). One relevant factor is “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” DuPont, 476 F.2d at 1361. Also, the descriptiveness of the words in Applicant’s mark are considered in making a determination of a likelihood of confusion. Another relevant factors is “the conditions under which and buyers to whom sales are made, i.e. impulse versus careful sophisticated purchasing.” Finally, “the nature and extent of any actual confusion,” or the lack of evidence thereof. Id.

As explained below, there is no likelihood of confusion between Applicant's mark CHIMNEYFLEXIBLE LINERS and Design and Opposer's CHIM-FLEX design. There are substantial differences in the marks, any similarities result from descriptive weak terms, and Applicant's and Opposer's sophisticated customers make careful and informed buying decisions. In addition, there is no evidence of any instances of actual confusion. Finally, Applicant adopted its mark in good faith.

A. Applicant's Mark and Opposer's Mark Are Dissimilar

Applicant submits that the overall appearance of Applicant's mark and Opposer's mark give rise to different commercial impressions and customers would not confuse the Opposer's mark with Applicant's mark.

In its Motion for Summary Judgment, Opposer confuses the marks at issue in these proceedings. Opposer's mark as depicted in its Registration No. 1,730,636 and as pled in its Notice of Opposition, is CHIM-FLEX. Applicant's mark is CHIMNEYFLEXIBLE LINERS and design, as depicted in its application Serial No. 75/723,671, the subject of the present opposition proceedings. In its Motion for Summary Judgment, Opposer attempts to insert a third mark into these proceedings, namely CHIMNEYFLEX, allegedly used by Applicant.<sup>2</sup> However, any use of the mark CHIMNEYFLEX by either party is irrelevant to these proceedings and is a transparent attempt on the part of Opposer to confuse the issue of the similarity of the mark CHIMNEYFLEXIBLE LINERS and Design and the mark CHIM-FLEX.

Applicant's mark consists of the descriptive wording CHIMNEYFLEXIBLE LINERS with a distinctive design element. See discussion at Section II.B. infra. The dominant feature of

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<sup>2</sup> Moreover, Opposer has attached pictures to the Huta Declaration, alleging that they show Applicant's use of the mark CHIMNEYFLEX. However, Opposer has provided no indication of where or when the mark was allegedly used, or verified that the pictures are true and accurate copies. As such, the pictures are unsubstantiated and self-serving and are nothing more than a ruse to disguise the marks clearly at issue in this case.

Applicant's mark is the design since a descriptive word which has little trademark significance will not be regarded as the dominant feature of the mark. See TMEP § 1213.10; Nestle's Milk Products, Inc. v. Baker Importing Company, Inc., 86 USPQ 80, 83 (CCPA 1950). In contrast, Opposer's mark consists of the wording CHIM-FLEX. A side-by side comparison of these marks shows that the marks sound different and create different visual impressions.

Opposer's Mark:

CHIM-FLEX

Applicant's Mark:



Opposer has placed great weight on the decision in Trek Bicycle Corp. v. Fier, 56 USPQ2d 1527 (TTAB 2000) in which the Board concluded that there was a likelihood of confusion between the word mark TREKNOLOGY and the word mark TREK. However, this case is inapposite. In Trek, the Opposer's mark TREK was a famous mark which, as the Board noted, is afforded more protection against confusion. In addition, Applicant's mark was an obvious play on words with the combination of the terms trek and technology. In contrast in this case, there is no evidence that Opposer's mark is famous, and the words in applicant's mark are descriptive and are combined with a distinctive design element. Therefore, Opposer's reliance on this case is misplaced.



B. The Common Elements Of The Marks Are Descriptive And Weak Reducing The Likelihood Of Any Confusion

“It has frequently been held that trademarks, comprising two words or a compound word, are not confusingly similar even though they have in common one word or part which is descriptive or suggestive of the nature of the goods to which the marks are applied, or of the use to which such goods are to be put.” Smith (Black Panther Company, Inc., assignee, substituted) v. Tobacco By-Products and Chemical Corporation (Diamond Black Leaf Company, assignee, substituted), 113 USPQ 339, 340 (CCPA 1957) (holding that the marks GREEN LEAF and Design and BLACK LEAF are not confusingly similar since the term LEAF is definitely suggestive of the use to which the goods are put) (and cases cited therein). Merely descriptive and weak designations in marks may be entitled to a narrow scope of protection. TMEP § 1207.01(b)(ix); In re Central Soya Company, Inc., 220 USPQ 914 (TTAB 1984). The reasons for not protecting descriptive marks are to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and to maintain freedom of the public to use the language involved. TMEP §1209.

In Nestle’s Milk Products, Inc. v. Baker Importing Company, Inc., the Court noted that the only similarity between the marks NESCAFE and HYCAFE was the descriptive word “café”, which was disclaimed in applicant’s application, and which means a coffee product to the trade and the purchasing public generally long before the registrant’s use of the mark. 86 USPQ 80 (CCPA 1950). The Court found that the balance of the marks, “Nes” and “Hy” were not similar and affirmed that decision that there would be no likelihood of confusion in the trade. Nestle, 86 USPQ at 83.

Similarly in Clark Equipment Company, v. The Baker-Lull Corporation (Otis Elevator Company, alleged assignee, substituted), the Court considered whether or not an application for

the mark YARDLOADER would be likely be confused with the mark CARLOADER, TRUCLOADER, PLANELOADER and YARDLIFT. 129 USPQ 220 (CCPA 1961). The Court determined that the similarity of the marks alone was not sufficient where the similarity arose from purely descriptive aspects of the marks, in this case, the terms “LOADER”, “LIFT” and “YARD” are all descriptive of the products offered under the marks. Clark, 129 USPQ at 221-222 (finding other factors such as the nature and cost of the goods and the discriminating customers to determine that there was no likelihood of confusion between the marks).

In this case, Applicant’s mark consists of the descriptive, and disclaimed, words CHIMNEYFLEXIBLE LINERS with a design. Opposer’s mark is CHIM-FLEX. The words “chimney” and “flexible” and “liners” are all descriptive of the products sold by the parties, that is, chimney liners. As such, the common elements of the marks are weak reducing the likelihood of any confusion. See MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, ¶ 23:48.

C. Applicant’s and Opposer’s Customers are Sophisticated and Make Careful And Informed Purchasing Decisions

While Applicant has conceded that the parties’ goods are similar, there would be not likelihood of confusion because the parties’ customers are sophisticated and discriminating purchasers and mark careful and informed purchasing decisions. Applicant’s customers are professional installers or wholesalers and distributors who in turn re-sell the products to professional installers. See Declaration of Dalton B. Barnoff, ¶ 9, attached hereto as Exhibit 1. The general public does not typically purchase applicant’s products directly because installation of applicant’s products by a non-licensed installer will void warranties. See Declaration of Dalton B. Barnoff, ¶ 12, attached hereto as Exhibit 1. Because Applicant’s products are installed by professional installers, the owners of the homes in which Applicant’s products are installed

are generally not aware of the trademarks of Applicant's products. See Declaration of Dalton B. Barnoff, ¶ 10, attached hereto as Exhibit 1.

Moreover, the retail price of Applicant's products are approximately \$350.00. See Declaration of Dalton B. Barnoff, ¶ 8, attached hereto as Exhibit 1. The products are, therefore, sufficiently expensive as to require careful planning on the part of the purchaser prior to the purchase.

Similarly, Opposer's customers are "sold directly and through distributors to chimney professionals, fireplace retailers, masonry contractors, handy man services, HVAC contractors, and occasionally to homeowners." See Opposer's Responses to Applicant's First Set of Interrogatories, Response to Interrogatory No. 25, attached hereto as Ex. 2.

As a result, both Applicant's and Opposer's customers are sophisticated purchasers who make informed and careful purchasing decisions, and would not be likely to be confused as to the source of Opposer's and Applicant's goods.

D. Applicant Has Provided No Evidence Of Any Alleged Instances Of Actual Confusion

Opposer has provided no evidence to corroborate its allegation that there have been instances of actual confusion. Instead Opposer has provided the self serving statements of John Huta in his Declaration that

I am aware of a number of instances of actual confusion between Opposer and Applicant as a result of Applicant's use of the CHIMNEYFLEX and CHIMNEY FLEXible mark with design in which purchasers and other members of the public have confused the two parties as a result of Applicant's use of the CHIMNEYFLEXible mark on its flexible chimney liners.

Mr. Huta suffers from the same confusion as Opposer in that the marks at issue are CHIMNEYFLEXIBLE LINERS and Design and CHIM-FLEX. From this single statement, it is unclear which marks and which goods were actually confused, if any. In addition, Opposer has

not provided details regarding the alleged confusion including the number of alleged instances of confusion, the names of any persons allegedly confused, the dates of any alleged confusion, the locations of such alleged confusion, the contact information of the allegedly confused customers, or the substance of such alleged instances of actual confusion. As such, Applicant is unable to examine and possibly refute any alleged instances of actual confusion. Thus, Opposer has again provided untrustworthy and unsubstantiated claims of instances of actual confusion in support of its Motion for Summary Judgment. It is submitted that any hint of any alleged instances of actual confusion be disregarded for purposes of this Motion for Summary Judgment.

E. Applicant Adopted A Mark Substantially Different Than Opposer's Mark.

Opposer has attempted to argue that Applicant adopted its mark with full knowledge of Opposer's mark and registration by using statements made in furtherance of settlement negotiations. Statements made in good faith for the purposes of compromise or settlement are inadmissible. See Fed. Rul. Evid. Rule 408. In any event, no bad faith can be inferred either from Applicant's statements or from the adoption of the mark. Applicant adopted its mark CHIMNEYFLEXIBLE LINERS and Design with descriptive terms and a distinctive design, in good faith and in a effort to avoid any confusion with Opposer.

**III. CONCLUSION**

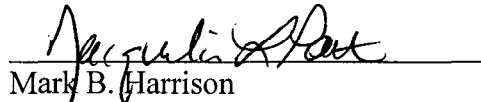
The nonmoving party "need only present evidence from which a jury could return a verdict in its favor." Copeland, 945 F.2d at 1566 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986)). "The non-moving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party." Salacuse, 44 U.S.P.Q.2d at 1418. Applicant asserts

that the facts presented herein, viewed in the light most favorable to it, there is no likelihood of confusion between Applicant's mark CHIMNEYFLEXIBLE LINERS and Design, and Opposer's mark CHIM-FLEX due to the substantial differences in the marks, any similarities result from descriptive and weak terms, and Applicant's and Opposer's sophisticated customers make careful and informed buying decisions.

For the reasons set forth above and in Applicant's Response to Opposer's Motion for Summary Judgment, Applicant respectfully requests that Opposer's Motion for Summary Judgment be denied,<sup>3</sup> and that Application Serial No. 75/723,671 be allowed.

Respectfully submitted,

By:



Mark B. Harrison

Jacqueline Levasseur Patt

**Venable, Baetjer, Howard & Civiletti, LLP**

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Attorney for Applicant

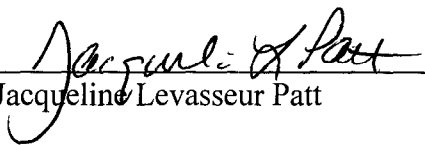
Date: February 14, 2003

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<sup>3</sup> If in the Board determination, there is no likelihood of confusion between Applicant's mark and Opposer's Mark, it is encouraged to enter a summary judgment sua sponte in favor of Applicant. TMEP § 528.08; Tonka Corp. v. Tonka Tools, Inc. 229 USPQ 857 (TTAB 1986); Cocker National Bank v. Canadian Imperial Bank of Commerce, 223 USPQ 909 (TTAB 1984); Visa International Service Ass'n v. Life-Code Systems, Inc., 220 USPQ 740 (TTAB 1983).

**CERTIFICATE OF SERVICE**

The undersigned, attorney for Applicant, hereby certifies that she served, by first class mail, postage prepaid, a copy of the foregoing Applicant's Response to Opposer's Motion for Summary Judgment and Memorandum in Support of Applicant's Response to Opposer's Motion for Summary Judgment upon John Benefiel, 280 Daines Street, Suite 100B, Birmingham, MI 48009, this 14<sup>th</sup> day of February, 2003.

  
\_\_\_\_\_  
Jacqueline Levasseur Patt

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RLH Industries, Inc.,

Opposer,

vs.

Trans Continental Equipment Ltd.,

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Opposition No. 91151964  
Serial No. 75/723671  
Mark:  
CHIMNEYFLEXIBLE LINERS



02-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**Attorney's Reference: 32071-**

**DECLARATION OF DALTON B. BARNOFF**

I, Dalton B. Barnoff, state and declare:

1. I am the President of Trans Continental Equipment, Ltd. and I have personal knowledge of the facts set forth below and if called upon could competently testify thereto.

2. I submit this declaration in support of Trans Continental Equipment, Ltd.'s Response to Opposer's Motion for Summary Judgment.

3. I am responsible for the day to day management and direction of the company.

4. I have been in the business of manufacturing and selling chimney products for over thirty (30) years.

5. Trans Continental Equipment, Ltd., filed an intent-to-use application to register the mark CHIMNEY FLEXIBLE LINERS and Design on June 4, 1999, Serial No. 75/723671, claiming priority on its corresponding Canadian application No. 1013353 filed April 27, 1999.

6. The mark as depicted in Serial No. 75/723671 was published for opposition in the *Official Gazette* on March 19, 2002 covering "ducts hoses, tubing pipes, collars and coils for heating, ventilation and air conditioning, all entirely or predominantly of metal processes; parts

**Exhibit 1**

for the foregoing” and disclaiming the terms CHIMNEYFLEXIBLE LINERS apart from the mark as shown.

7. The Applicant, Trans Continental Equipment, Ltd., is in the business of manufacturing and selling chimney products including flexible chimney liners and parts therefor.

8. The suggested retail price of applicant’s products are approximately \$350.00.

9. Applicant’s products are either sold directly to professional installers or sold in bulk to wholesalers and distributors who in turn re-sell the products to professional installers.

10. Because Applicant’s products are installed by professional installers, the owners of the homes in which Applicant’s products are installed are generally not aware of the trademarks of Applicant’s products.

11. The general public does not typically purchase applicant’s products directly because installation of applicant’s products by a non-licensed installer will void warranties.

12. In view of the manner in which Applicant’s products are sold and distributed, I do not believe that there would be a likelihood of confusion between Applicant’s products sold under the CHIMNEYFLEXIBLE LINERS and Design mark, and Opposer’s products sold under the CHIM-FLEX mark.

I declare under penalty of perjury under the laws of the United States and the State of Virginia that the foregoing is true and correct.

Done this 14th day of February 2003

---

Dalton B. Barnoff  
President  
Trans Continental Equipment Ltd

DC2DOCS1/434774



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RLH Industries, Inc. )  
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v. )  
Trans Continental Equipment Ltd. )  
Applicant. )  
\_\_\_\_\_ )

Opposition No. 91151964



02-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Box TTAB  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

**OPPOSER'S RESPONSE TO APPLICANT'S FIRST  
SET OF INTERROGATORIES**

RLH Industries, Inc. ("Opposer"), by its counsel, John R. Benefiel, hereby  
submits its objections to Trans Continental Equipment Ltd. ("Applicant") First Set of  
Interrogatories to Opposer.

**General Objections**

1. Opposer objects to each interrogatory to the extent that it seeks  
information protected from discovery by the attorney-client privilege, work product doctrine, or  
other applicable privilege.
2. Opposer objects to each definition and interrogatory contained in  
Applicant's First Set of Interrogatories that seeks to impose on Opposer any obligations or

Response to Interrogatory No. 22

Opposer objects to Interrogatory No. 22 as irrelevant to this opposition.

Interrogatory No. 23

Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Opposer's Mark.

Response to Interrogatory No. 23

None.

Interrogatory No. 24

Describe each formal or informal investigation, study, and/or search conducted by or on behalf of Opposer, or of which Opposer has knowledge, pertaining to Applicant's Mark.

Response to Interrogatory No. 24

Opposer determined that Applicant's registration application had been filed and monitored its pendency in order to file this opposition Notice.

Interrogatory No. 25

Describe the channels of trade of Opposer's goods and services covered by Opposer's Mark as described in the Notice of Opposition.

Response to Interrogatory No. 25

Products sold under the CHIM-FLEX mark are sold both directly and through distributors to chimney professionals, fireplace retailers, masonry contractors, handy man

services, HVAC contractors and occasionally to homeowners.

Interrogatory No. 26

Describe the customers to whom Opposer's goods and services are marketed, distributed, and/or sold, including, but not limited to, the customers' demographics (e.g., geographic location, age, profession, education and income).

Response to Interrogatory No. 26

Opposer objected to Interrogatory No. 26 as irrelevant. The general categories are described in the answer to Interrogatory No. 25.

Interrogatory No. 27

Identify any assignments, licenses or other transfers or grants of any rights to or from Opposer with respect to the trademark identified in the Notice of Opposition.

Response to Interrogatory No. 27

None.

Interrogatory No. 28

Identify and describe all oral or written agreements, including all assignments and licenses entered into by Opposer referring or relating to the Mark, specifying the date of each agreement, the identity of all the parties thereto and the reason and purpose of the agreement.

Response to Interrogatory No. 28

None.

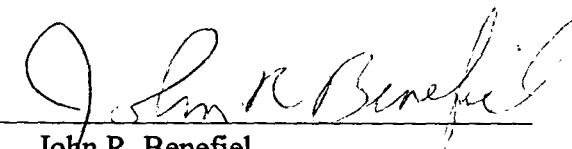
Response to Interrogatory No. 39

Robert Huta. John R. Benefiel.

RLH Industries, Inc.

Date: November 12, 2002

By:

A handwritten signature in cursive script, appearing to read "John R. Benefiel", is written over a horizontal line.

John R. Benefiel  
280 Daines Street  
Suite 100 B  
Birmingham, Michigan 48009  
(248) 644-1455  
Attorney for Opposer